

**MINUTES OF THE MEETING OF THE  
UNIFORM COMMERCIAL CODE COMMITTEE  
OF THE STATE BAR OF CALIFORNIA**

April 8, 2004  
9:30 a.m. to approximately 11:30 a.m.  
Videoconference Meeting at  
Morrison & Foerster's  
Los Angeles, San Francisco, Palo Alto and San Diego Offices

The April 8, 2004 meeting of the Uniform Commercial Code Committee (the "Committee") was called to order at approximately 9:30 a.m. with Andrew Erskine and Pauline Stevens presiding.

**A. Administrative Matters.**

1. **Appointment of Secretary.** Joel Berman was appointed as the secretary for the meeting.

2. **Approval of February 3, 2004 Meeting Minutes.** The minutes of the February 3, 2004 meeting were presented in the form disseminated prior to the meeting and after minor revisions approved as corrected.

3. **Future Meeting Dates/Locations.** The Committee reconfirmed and established future meeting dates as follows:

**May 13, 2004 (Thursday)**, 9:00 a.m., Fifth Annual Spring Meeting of the Business Law Section of the State Bar of California in conjunction with the California Bankers Association (Hyatt Huntington Beach Resort & Spa). Meeting open to all meeting attendees (other than consideration of committee applicants). Certain of the Committee's subcommittees (i.e., Article 6, Article 7, Article 2/2A, Certificate of Title, and Opinion) will each prepare a 10-15 minute substantive presentation for this meeting. A separate program regarding the repeal of Article 6 will be presented at a later time during the Spring Meeting.

**June 9 or 17, 2004**, Videoconference, 9:30 a.m. at the offices of Morrison & Foerster in Los Angeles, San Francisco, Palo Alto and San Diego. Final scheduling to occur at a later date.

**B. Report on Article 6 Subcommittee.**

Harry Sigman reported that (i) the Arizona governor recently signed the Article 6 repeal, so there are now 42 states which have repealed Article 6, and (ii) repeal by North Carolina might occur this year and in Indiana possibly next year. Mr. Sigman requested that Committee members review proposed changes to the Article 6 report immediately upon receipt and communicate comments to Ms. Stevens.

**C. Report of the Article 2/2A Subcommittee.**

Paul Barkes reported on the status of the Article 2/2A Subcommittee. Mr. Barkes had previously reported that there are numerous problems with Articles 2 and 2A, and the Article 2/2A Subcommittee would prefer to fix these problems through NCCUSL to avoid California nonuniformity. Mr. Barkes and Mr. Sigman indicated that the report from the Subcommittee could be used to influence NCCUSL to impact the legislation nationally. The Committee discussed problems with Section 2-703 and 2-711. Mr. Barkes asked for comments from Committee members on the report by the beginning of next week. He advised that he is trying to finalize the report by April 28.

**D. Report on Uniform Certificate of Title Act Subcommittee.**

Konrad Schreier reported that he called Professor Allen Harrell, reporter of the Uniform Certificate of Title Act; Mr. Schreier said that Professor Harrell said he was planning an updated draft by the end of April, but since Mr. Schreier has not received it yet, Mr. Schreier said he would follow up with Professor Harrell. Mr. Schreier said that the NCCUSL schedule for presenting the draft for vote had been postponed for a year. In the meantime, Professor Harrell is attempting to address issues raised by various stakeholders. Mr. Sigman said that the Committee would have more impact if we raise issues before NCCUSL meets at its annual summer meeting.

**E. Report of the Opinion Subcommittee.**

Mr. Erskine reported that a draft report was distributed 10 days ago, which was sent to the Executive Committee and the Opinions Committee of the Business Law Section for review. Pamela Martinson said that the subcommittee has focused on an illustrative opinion which prompted other changes to the report. The subcommittee has received limited comments from the last draft, which comments were incorporated. Bob Anderson of the Hidden Lien Subcommittee said that he is working on completion of a footnote in the opinion subcommittee report relating to hidden liens, but Ms. Martinson indicated that there will merely be a cross-reference to the report of the Hidden Liens Subcommittee rather than a long footnote. Mr. Erskine suggested that the opinion subcommittee report be submitted for approval at the May 13 Committee meeting.

Ms. Stevens asked if there was discussion in the report distinguishing between delivery of certificated securities and other types of possessory collateral; Ms. Martinson responded affirmatively. Ms. Stevens indicated she may send comments to the subcommittee.

**F. Report of Hidden Lien Subcommittee.**

Mr. Anderson said that the subcommittee is compiling a list of all hidden liens under California and federal law. He said that the subcommittee plans to speak with the Business Law Section Insolvency Committee and, possibly, other committees including the Agriculture Committee, about their awareness of other hidden liens. Mr. Anderson asked Committee members about who else should be contacted. The subcommittee's plan is to assemble a compendium of hidden liens for distribution and sale. Ms. Stevens requested that the compendium indicate the application of automatic perfection and lien priority. Mr. Sigman requested that the compendium indicate which liens would not be subject to Article 9.

**G. Report on State Bar Automation Project.**

Vasco Morais has spoken with Kathleen Vasquez of the Secretary of State. Mr. Morais said Ms. Vasquez said that internal testing is moving along. He indicated that the Secretary of State UCC website was scheduled for a June 1 roll-out date, including electronic filing, search, amendment, etc. A full demonstration will be made at the BLS Spring Meeting.

Ms. Vasquez then joined the Committee meeting by conference call. She confirmed Mr. Morais' report. She stated that the Secretary of State's office is working on instructions to the website; she would like assistance from the subcommittee in preparing instructions, and is planning to discuss this with the subcommittee in two weeks. Ms. Vasquez wants to show entire product to the subcommittee; she and Mr. Morais will discuss arrangements for reviewing the proposed product, and then Mr. Morais will discuss with the subcommittee.

**H. New Committee Members.**

Membership applications were discussed, and the Committee agreed to defer decisions until subsequent meetings. Mr. Sigman urged all members to solicit qualified members because the Committee gets more qualified members that way rather than through "random" applications. Final decisions will likely to be made in June, but the timing depends on the Executive Committee's approval process. The Committee will probably need to fill eleven slots in the fall.

**I. Report on Recent Developments Relating to Revised Article 1.**

Mr. Erskine reported on deliberations on the NCCUSL draft. The key issue seems to be the California Bankers Association's concern about Section 1-301's revisions pertaining to choice of law. A telephone conference call will take place next week among some members of the Committee and CBA task force members concerning this issue. Mr. Sigman encouraged Committee members to ask their bank clients to read and consider our Report on Revised Article 1.

**J. Report on Website Review and Development Project.**

Gary Rosenbaum reported that the subcommittee has posted more minutes and other materials to the archives portion of the website. Links to the other 49 Secretary of State websites have been completed. Mr. Morais reported that corrections need to be made to the links and acknowledged that this will be an ongoing monitoring process. Mr. Rosenbaum reported confusion about where to file in the District of Columbia.

**K. Report of Legislature Subcommittee.**

Mr. Erskine reported on the chart reviewing current legislation. He highlighted AB1182, which takes government agencies out of the UCC. This bill has already been enacted. The Committee decided not to press for a limiting amendment.

Mr. Erskine also reported on legislation concerning attorneys' liens, particularly AB 2236. Mr. Sigman cautioned against deferring decision on how to react to this bill because delay

may make it harder to object to the bill if the Committee deems that desirable. The Committee noted that the Insolvency Committee is also analyzing this bill.

**L. Report of Subcommittee Regarding Article 3 and 4 Reserves.**

Jaryn Barker reported that she has not received further comments on proposed amendments to Article 3 and 4 pertaining to demand drafts. Her proposed amendments were an attempt to address certain NCCUSL objections.

**M. Progress Report**

The programs at the BLS Spring Meeting were discussed earlier in this meeting.

Mr. Anderson said that the proposed program for the BLS Annual Meeting (October 7 – 10, 2004) will address hidden liens.

Joint presentation with International Law Section -- Nothing further to report.

**N. Publications Decisions.**

Ms. Stevens reported that the Committee did not need to prepare the annual UCC survey after all because Steve Weise agreed to do it. Peter Szurley is writing an article which will satisfy the Committee's immediate publications need; his article will address alternative means for commercial parties to waive jury trial.

Mr. Morais said he is considering an article on online filing, for publication in the Business Law News. Mr. Erskine said he is in outline stage on an article on consumer deposit accounts.

**O. Other.**

**1. Bob Slattery on NCCUSL developments** - said there is little to report. There is a standing committee on electronic payment systems which may be proceeding with further developments on check truncation.

**2. Pauline Stevens** - said that electronic commerce issues seem to be affecting other issues. She questioned whether there should be a subcommittee to address and keep abreast of those issues. She asked Committee members to think about her inquiry during the next month.

\* \* \* \* \*

The meeting was adjourned at approximately 11:30 a.m.